

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

BLUE SPIKE, LLC,

Plaintiff,

V.

TEXAS INSTRUMENTS, INC.

Defendant.

Consolidated Civil Action No. 6:12-CV-499-LED

JURY TRIAL DEMANDED

**PLAINTIFF'S REPLY IN RESPONSE TO DEFENDANT HARMONIX MUSIC
SYSTEM, INC.'S FIRST AMENDED COUNTERCLAIMS**

Plaintiff Blue Spike, LLC files this Reply to the First Amended Counterclaims of Harmonix Music Systems, Inc.’s (“Harmonix” or “Defendant”) (Dkt. No. 1458) as follows. All allegations not expressly admitted or responded to by Blue Spike, LLC are denied.

COUNTERCLAIMS

1. Paragraph 1 contains no allegations requiring an admission or denial.
2. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 2 and therefore denies them.
3. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 3 and therefore denies them.
4. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 4 and therefore denies them.
5. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 5 and therefore denies them.
6. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 6 and therefore denies them.

7. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 7 and therefore denies them.
8. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 8 and therefore denies them.
9. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 9 and therefore denies them.
10. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 10 and therefore denies them.
11. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 11 and therefore denies them.
12. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 12 and therefore denies them.
13. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 13 and therefore denies them.
14. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 14 and therefore denies them.
15. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 15 and therefore denies them.
16. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 16 and therefore denies them.
17. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 17 and therefore denies them.

18. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 18 and therefore denies them.

19. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 19 and therefore denies them.

20. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 20 and therefore denies them.

21. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 21 and therefore denies them.

22. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 22 and therefore denies them.

23. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 23 and therefore denies them.

24. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 24 and therefore denies them.

25. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 25 and therefore denies them.

26. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 26 and therefore denies them.

27. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 27 and therefore denies them.

28. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 28 and therefore denies them.

29. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 29 and therefore denies them.

30. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 30 and therefore denies them.

31. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 31 and therefore denies them.

32. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 32 and therefore denies them.

33. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 33 and therefore denies them.

34. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 34 and therefor denies them.

35. Blue Spike, LLC admits that an actual controversy exists between Blue Spike, LLC and Defendant by virtue of the allegations of Blue Spike, LLC's Complaint and First Amended Complaint and Defendant's Answers and Counterclaims.

36. Paragraph 33 contains no allegations requiring an admission or denial.

COUNT ONE
(Declaratory Judgment of Non-Infringement of the '175 Patent)

37. Blue Spike, LLC repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1-36.

38. Blue Spike, LLC admits the allegations of Paragraph 38.

39. Blue Spike, LLC denies the allegations of Paragraph 39.

40. Blue Spike, LLC denies that Defendant is entitled to the relief it seeks in Paragraph 40.

COUNT TWO
(Declaratory Judgment of Invalidity of the '175 Patent)

41. Blue Spike, LLC repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1-40.
42. Blue Spike, LLC denies the allegations of Paragraph 42.
43. Blue Spike, LLC denies that Defendant is entitled to the relief it seeks in Paragraph 43.

COUNT THREE
(Declaratory Judgment of Non-Infringement of the '494 Patent)

44. Blue Spike, LLC repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1-43.
45. Blue Spike, LLC admits the allegations of Paragraph 45.
46. Blue Spike, LLC denies the allegations of Paragraph 46.
47. Blue Spike, LLC denies that Defendant is entitled to the relief it seeks in Paragraph 47.

COUNT FOUR
(Declaratory Judgment of Invalidity of the '494 Patent)

48. Blue Spike, LLC repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1-47.
49. Blue Spike, LLC denies the allegations of Paragraph 49.
50. Blue Spike, LLC denies that Defendant is entitled to the relief it seeks in Paragraph 50.

COUNT FIVE
(Declaratory Judgment of Non-Infringement of the '700 Patent)

51. Blue Spike, LLC repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1-50.
52. Blue Spike, LLC admits the allegations of Paragraph 52.
53. Blue Spike, LLC denies the allegations of Paragraph 53.

54. Blue Spike, LLC denies that Defendant is entitled to the relief it seeks in Paragraph 54.

COUNT SIX
(Declaratory Judgment of Invalidity of the '700 Patent)

55. Blue Spike, LLC repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1-54.

56. Blue Spike, LLC denies the allegations of Paragraph 56.

57. Blue Spike, LLC denies that Defendant is entitled to the relief it seeks in Paragraph 57.

COUNT SEVEN
(Declaratory Judgment of Non-Infringement of the '472 Patent)

58. Blue Spike, LLC repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1-57.

59. Blue Spike, LLC admits the allegations of Paragraph 59.

60. Blue Spike, LLC denies the allegations of Paragraph 60.

61. Blue Spike, LLC denies that Defendant is entitled to the relief it seeks in Paragraph 61.

COUNT EIGHT
(Declaratory Judgment of Invalidity of the '472 Patent)

62. Blue Spike, LLC repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1-61.

63. Blue Spike, LLC denies the allegations of Paragraph 63.

64. Blue Spike, LLC denies that Defendant is entitled to the relief it seeks in Paragraph 64.

COUNT NINE
(Inequitable Conduct)

65. Blue Spike, LLC repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1-64.

66. Blue Spike, LLC denies the allegations of Paragraph 66.

67. Blue Spike, LLC denies the allegations of Paragraph 67.
68. Blue Spike, LLC denies the allegations of Paragraph 68.
69. Blue Spike, LLC denies that Defendant is entitled to the relief it seeks in Paragraph 69.

PRAYER FOR RELIEF

Blue Spike, LLC denies that Defendant is entitled to any of the relief it requests.

**REQUEST FOR RELIEF
PLAINTIFF'S PRAYER FOR RELIEF**

In addition to the relief requested in Plaintiff's First Amended Complaint, Blue Spike, LLC respectfully requests a judgment against Defendant as follows:

- (a) That Defendant take nothing by its Counterclaims;
- (b) That the Court award Blue Spike, LLC its costs and attorneys' fees incurred in defending against these Counterclaims; and
- (c) Any and all further relief for the Blue Spike, LLC as the Court may deem just and proper.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Randall T. Garteiser, am the ECF User whose ID and password are being used to file this document. I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this day. Pursuant to Federal Rule of Civil Procedure 5, this document was served via U.S. Mail and electronic means to counsel for Defendant that are not receiving this document via CM/ECF.

/s/ Randall T. Garteiser
Randall T. Garteiser